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**TITLE 329 SOLID WASTE MANAGEMENT
BOARD**

**CONTINUATION OF FIRST NOTICE
#05-167(SWMB)**

**AMENDMENTS TO 329 IAC 10-20 AND 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES;
FINANCIAL RESPONSIBILITY AND ANNUAL REVIEW AND ANNUAL SURVEY RESULTS**

PURPOSE OF NOTICE

A first notice published in the Indiana Register at 28 IR 3060 proposed to amend 329 IAC 10-39 on financial assurance mechanisms to clarify that only a trust fund can be funded annually and that the annual payments can only be for the duration of the initial permit or over the remaining life of the facility, whichever is shorter. The post closure must be fully funded before waste is placed. It also had proposed to amend 329 IAC 10-39-2(c) to change the date of the annual financial review from the anniversary of the permit to a set date of February 15 each year. This is the date the annual survey results must be submitted. This continuation of the first notice now asks for comment on clarifying language that post closure funding, for any mechanism but trust fund, be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. This continuation also seeks comment on 329 IAC 10-20 regarding changing the annual survey (fly-over) to between January 1 to March 30, with submittal of both the annual financial review and the annual survey to be every June 15.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 10-20-24; 329 IAC 10-39-2; 329 IAC 10-39-3.

AUTHORITY: IC 4-22-2; IC 13-14-9; IC 13-14-8-1; IC 13-14-8-2; IC 13-15-2; IC 13-19-3-1; IC 13-30-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

This rulemaking involves changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the remaining life of the MSWLF, whichever is shorter. In addition, the annual financial review and the annual survey (flyover) results both are to be submitted on the same date each year.

The changes regarding the trust fund financial assurance mechanism are being proposed to protect the state of Indiana financially. If a landfill goes bankrupt before the post-closure is fully funded, the State could be left with post-closure costs. The proposed changes to submit an annual financial review are for the convenience of the regulated community. This rule is currently not as stringent as the federal regulation regarding trust funds and the allowance for other mechanisms to be annually funded. The rule is also unclear and inconsistent.

ADDITIONAL SUBJECT MATTER

A workgroup made up of industry representatives, consultants, and IDEM staff met to discuss these rule changes. These additional changes were suggested by the workgroup. In addition to the subject matter listed in the first notice of comment period at 28 IR 3060, comments are requested on the following:

- (1) Allowing post closure funding, for other than the trust fund, to be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. All post closure funding would be in place for an area certified to begin fill prior to any filling taking place. A formula would be used to determine the amount necessary. Costs would either be listed as fixed or not fixed for purposes of the formula.
- (2) Changing the annual fly-over to January 1 to March 30, with submittal of both the annual financial review and the annual survey to be June 15.

Alternatives to be Considered Within the Rulemaking

Alternative 4. (See 28 IR 3060, July 1, 2005, for other alternatives) Allowing post closure funding, for other than the trust fund, to be appropriately fully funded based on a formula that takes into account the acreage that will be certified to begin placing waste. A formula would be used to determine the amount necessary. Changing the annual survey (fly-over) to between January 1 to March 30, with submittal of both the annual financial review and the annual survey to be June 15.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

Is this alternative imposed by federal law or is there a comparable federal law? Yes, in part, funding changes comport with federal law.

If it is a federal requirement, is it different from federal law? It is the same as the federal requirements.

If it is different, describe the differences.

Applicable Federal Law 40 CFR 258.70-258.74 prescribes the requirements for the financial assurance and financial responsibility required under the federal regulations. This regulation sets the standards for financial assurance for closure, post-closure and corrective action for municipal solid waste landfills. It also provides the allowable mechanisms for financial assurance. The requirement to fully fund a trust fund over the term of the initial permit or over the remaining life of the landfill unit, whichever is shorter, is a federal regulation at 40 CFR 258.74(a)(2). Also, annual payments are only allowed in the federal rules for trust funds under 40 CFR 258.74(a)(3).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 4. Regarding the changes to the post closure funding, there would be no additional cost to the regulated community as these conforming amendments are already required by federal regulations. The regulated community is not required to choose a trust fund as their financial assurance mechanism but has a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue, IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.in.gov

Public Participation and Workgroup Information

A workgroup has been meeting regarding this rulemaking. If you are interest in being a member of this workgroup, please contact Lynn West, Rules, Outreach and Planning Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life, or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-167(SWMB) [FA Change Rule]
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality
Indiana Department of Environmental Management
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Land Quality's Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by January 30, 2006.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce H. Palin
Assistant Commissioner
Office of Land Quality